

### REMARKS

This Application has been carefully reviewed in light of the Office Action mailed August 29, 2008. At the time of the Office Action, Claims 18-31 were pending in this Application. Claims 18-27 and 29-35 were rejected and Claim 28 was objected to. Claims 18 and 31 have been amended to further define various features of Applicants' invention. Claims 1-17 were previously cancelled without prejudice or disclaimer. Applicants respectfully request reconsideration and favorable action in this case.

#### Rejections under 35 U.S.C. § 102

Claims 18-26 and 29-35 were rejected by the Examiner under 35 U.S.C. §102(e) as being anticipated by International Patent Application Publication No. WO02/082751 by Peter Larsson ("*Larsson*"). Applicants respectfully traverse and submit the cited art does not teach all of the elements of the claimed embodiment of the invention.

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987). Furthermore, "the identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co. Ltd.*, 868 F.2d 1226, 1236, 9 U.S.P.Q.2d 1913, 1920 (Fed. Cir. 1989). Applicants respectfully submit that the cited art as anticipated by the Examiner cannot anticipate the rejected Claims, because the cited art does not show all the elements of the present Claims.

Applicant submits a new set of claims replacing, without prejudice, the current set of claims. The independent claims now specify that the at least one pilot signal comprises a request for a physical layer expansion and that the assignment table comprises acknowledgment data for the physical layer expansion. Basis for this amendment can be found throughout the whole application as filed, especially, page 7, lines 19 to 26; page 8, lines 5 to 7; and Figure 4. Thus, no new matter has been added. The Examiner may take the individual amendments made from the marked-up version of the amended set of claims above.

*Larsson* fails to disclose, at least, a method wherein the at least one pilot signal comprises a request for a physical layer expansion and wherein the assignment table comprises acknowledgment data for the physical layer expansion. With respect to physical layer expansion, the Examiner refers to embodiments described in the discussion of background art. Office Action, page 5, first paragraph. Here a difference between the standard IEEE 802.11 and IEEE 802.11a is disclosed. This difference is a physical layer, the high rate PHY, on a 5 GHz band, which is called IEEE 802.11a. *Larsson*, page 1, line 19 to page 2, line 2. In this regard, the Examiner also refers to the summary of the invention which discloses that exemplary embodiments in *Larsson* take a transmit power-control approach, with the objective to improve overall system performance by addressing QoS goals considered in the IEEE 802.11 TGe. *Larsson*, page 7, lines 3-7. However, *Larsson* is silent with respect to a method wherein the at least one pilot signal comprises a request for a physical layer expansion and wherein the assignment table comprises acknowledgment data for the physical layer expansion.

Since *Larsson* fails to disclose at least a method wherein the at least one pilot signal comprises a request for a physical layer expansion and wherein the assignment table comprises acknowledgment data for the physical layer expansion, it is respectfully requested that the rejection under 35 U.S.C. §102 is withdrawn. Applicants respectfully submit that the dependent Claims are allowable at least to the extent of the independent Claim to which they refer, respectively. Thus, Applicants respectfully request reconsideration and allowance of the dependent Claims. Applicants reserve the right to make further arguments regarding the Examiner's rejections under 35 U.S.C. §102, if necessary.

### **Rejections under 35 U.S.C. §103**

Claim 27 was rejected under 35 U.S.C. §103(a) as being unpatentable over *Larsson*. Applicants respectfully traverse and submit the cited art combinations, even if proper, which Applicants do not concede, does not render the claimed embodiment of the invention obvious.

In order to establish a prima facie case of obviousness, the references cited by the Examiner must disclose all claimed limitations. *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580

(C.C.P.A. 1974). Even if each limitation is disclosed in a combination of references, however, a claim composed of several elements is not proved obvious merely by demonstrating that each of its elements was, independently, known in the prior art. *KSR Int'l. Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1741 (2007). Rather, the Examiner must identify an apparent reason to combine the known elements in the fashion claimed. *Id.* "Rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." *Id.*, citing *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006). Finally, the reason must be free of the distortion caused by hindsight bias and may not rely on ex post reasoning. *KSR*, 127 S.Ct. at 1742. In addition, evidence that such a combination was uniquely challenging or difficult tends to show that a claim was not obvious. *Leapfrog Enterprises, Inc. v. Fisher-Price, Inc. and Mattel, Inc.*, 485 F.3d 1157, 1162 (Fed. Cir. 2007), citing *KSR*, 127 S.Ct. at 1741.

The rejection under 35 U.S.C. §103(a) is respectfully traversed because of the clarified amended set of claims filed. The independent claims now specify that the at least one pilot signal comprises a request for a physical layer expansion and that the assignment table comprises acknowledgment data for the physical layer expansion.

Since *Larsson* fails to teach at least a method wherein the at least one pilot signal comprises a request for a physical layer expansion and wherein the assignment table comprises acknowledgment data for the physical layer expansion, it is respectfully requested that the rejection under 35 U.S.C. §103(a) is withdrawn. Applicants respectfully submit that the dependent Claims are allowable at least to the extent of the independent Claim to which they refer, respectively. Thus, Applicants respectfully request reconsideration and allowance of the dependent Claims. Applicants reserve the right to make further arguments regarding the Examiner's rejections under 35 U.S.C. §103(a), if necessary, and do not concede that the Examiner's proposed combinations are proper.

#### **Allowable Subject Matter**

Applicants appreciate Examiner's consideration and indication that Claim 28 would be allowable if rewritten in independent form to include all of the limitations of the base

claim and any intervening claims. However, as stated above, Applicant believes that all pending claims are allowable.

### CONCLUSION

Applicants have made an earnest effort to place this case in condition for allowance in light of the remarks set forth above. Applicants respectfully request reconsideration of the pending claims.

Applicants respectfully submit a Request for Continued Examination (RCE) Transmittal, along with a Petition for Three-Month Extension of Time. The Commissioner is authorized to charge any fees required to Deposit Account 50-2148 in order to effectuate these filings.

Applicants believe there are no additional fees due at this time, however, the Commissioner is hereby authorized to charge any fees necessary or credit any overpayment to Deposit Account No. 50-2148 of Baker Botts L.L.P.

If there are any matters concerning this Application that may be cleared up in a telephone conversation, please contact Applicants' attorney at 512.322.2689.

Respectfully submitted,  
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